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8 UNITED STATES DISTRICT COURT
9 DISTRICT OF NEVADA

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11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 vs.
14 COREY STUBBS,
15 Defendant.

2:13-cr-00381-APG-CWH

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF THE
SUPPRESSION OF THE DNA BUCCAL
SWAB SEIZED FROM DEFENDANT
STUBBS AS A RESULT OF A SEARCH
WARRANT CONTAINING MATERIAL
MISREPRESENTATIONS

17 COMES NOW the defendant, Corey Stubbs, by and through his counsel fo record,
18 Shari L. Kaufman, Assistant Federal Public Defender, and hereby files this memorandum of points
19 and authorities in support of her request that this Court enter an order suppressing the DNA buccal
20 swab law enforcement seized from Corey Stubbs as a result of a search warrant which contained
21 material misrepresentations of fact.

22 DATED this 25th day of April, 2003.

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24 RENE L. VALLADARES
25 Federal Public Defender

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/s/ *Shari L. Kaufman*

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By: _____
SHARI L. KAUFMAN,
Assistant Federal Public Defender

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MEMORANDUM OF POINTS AND AUTHORITIES

During the morning portion of the hearing the Court conducted today regarding defendant Corey Stubbs' objections to the magistrate court's report and recommendation denying his motion to suppress, the Court granted in part, and reserved in part Stubbs' motion to suppress. Of relevance to the instant memorandum, the Court found that, after removing the multiple material misrepresentations Detective Farrington included in the application for the telephonic search warrant, the affidavit failed to articulate probable cause to search the Powell Plateau house for evidence related to firearms. Thus, the Court held that the shotgun seized as a result of the invalid warrant must be suppressed.

The Court reserved extending its ruling to the DNA buccal swabs that Detective Farrington also requested in his application for a search warrant. Stubbs asks this Court to suppress the buccal swabs.

First, pursuant to *Franks v. Delaware*, 438 U.S. 154 (1978) and its progeny, suppression of the buccal swabs is required because the application included not just material misrepresentations, but also material omissions that undermine the probable cause determination. In particular, the search warrant application omitted the fact that police had information from an unidentified source that Kevin Stubbs possessed a firearm, that Kevin Stubbs had reportedly threatened to fire at police officers, and that Kevin fled from the police when they attempted to stop him. This information was disclosed to defense counsel after the suppression hearing. Had that information been included in the application for the search warrant, it would have effectively demonstrated that the officers only had probably cause to believe that Kevin—and not Corey—possessed a firearm.

Second, suppression of the buccal swab is consistent with the Supreme Court's holding in *Franks* and the purposes of the exclusionary rule. The rule governing situations involving misleading search warrant affidavits was articulated by the Supreme Court in *Franks v. Delaware*, 438 U.S. 154 (1978). There, the Court held that where the defendant proves by a preponderance of the evidence "that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, and [that] the allegedly false statement is

1 necessary to the finding of probable cause, the Fourth Amendment requires that ... the fruits of the
2 search [must be] excluded to the same extent as if probable cause was lacking on the face of the
3 affidavit." *Franks*, 438 U.S. at 155–56. Here, the search warrant relied almost exclusively on
4 material misrepresentations. Those misrepresentations provided the backbone for Detective
5 Farrington's request to search the house *and* to collect DNA from Corey. Because the Court has
6 found that, having removing the lies, the warrant lacked probable cause as to the search of the house,
7 it must likewise find that the warrant lacked probable cause as the seizure of DNA.

8 Moreover, suppression of the buccal swab is consistent with the purposes of the
9 exclusionary rule. "To trigger the exclusionary rule, police conduct must be sufficiently deliberate
10 that exclusion can meaningfully deter it, and sufficiently culpable that such deterrence is worth the
11 price paid by the justice system. As laid out in our cases, the exclusionary rule serves to deter
12 deliberate, reckless, or grossly negligent conduct, or in some circumstances recurring or systemic
13 negligence." *Herring v. United States*, 555 U.S. 135, 144 (2009). In this case, law enforcement
14 deliberately lied in order to obtain a search warrant. The appropriate remedy for this conduct is
15 suppression of all fruits of the warrant, including the buccal swab.

16 DATED this 25th day of April, 2003.
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18 RENE L. VALLADARES
19 Federal Public Defender

20 /s/ *Shari L. Kaufman*
21 By : _____

22 SHARI L. KAUFMAN,
23 Assistant Federal Public Defender
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1 **CERTIFICATE OF ELECTRONIC SERVICE**

2 The undersigned hereby certifies that she is an employee of the Law Offices of the
3 Federal Public Defender for the District of Nevada and is a person of such age and discretion as to
4 be competent to serve papers.

5 That on April 25, 2014, she served an electronic copy of the above and foregoing

6 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE**
7 **SUPPRESSION OF THE DNA BUCCAL SWAB SEIZED FROM DEFENDANT STUBBS AS**
8 **A RESULT OF A SEARCH WARRANT CONTAINING MATERIAL**
9 **MISREPRESENTATIONS**, by electronic service (ECF) to the person named below:

10 DANIEL BOGDEN
11 United States Attorney
12 ROBERT KNIEF
13 Assistant United States Attorney
 333 Las Vegas Blvd. So., 5th Floor
 Las Vegas, Nevada 89101

14 */s/ Maribel Bran*

15 Employee of the Federal Public Defender

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